Filed 9/30/03 P. v. Duron CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE, Plaintiff and Respondent, v. MOSES JESSE DURON, Defendant and Appellant.	C042228 (Super.Ct.No. CRF02-241)

After the trial court denied his motion to suppress (Pen. Code, § 1538.5; further undesignated statutory references are to the Penal Code), defendant Moses Jesse Duron entered a no contest plea to a charge of being a felon in possession of a firearm (§ 12021), and admitted having been convicted of three prior serious or violent felonies within the meaning of section 667(d) and (e). Duron was sentenced to state prison for a term of 25 years to life.

Defendant appeals, arguing the trial court erred in denying his motion to suppress. We disagree and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

On April 14, 2002, at approximately 2:30 to 2:45 a.m., Wheatland Police Officers Duncan and Murray went to a campsite at Camp Far West Lake after the police department received a report that shots had been fired. Duncan and Murray spoke to witnesses at the campsite who told them that Moses Duron fired the weapon, a black .380-caliber handgun. The witnesses also said that Duron was accompanied by two other adult Hispanic males in a white, newer model Honda that had been lowered and had custom rims. They added that Duron might be staying at the Rio Rancho Motel in Linda in room 209.

The officers broadcast a "be on the lookout" (BOLO) message over the "county radio" that is monitored by several agencies.

About 10 minutes later a deputy inquired over the radio whether the car in which the suspects were riding could have been a Lexus and, after asking one of the witnesses, Murray told the deputy that it could have been.

Yuba County Sheriff's Deputy John Sadlowski was also on patrol at the time of this incident and heard that the suspects might be staying at the Rio Rancho Motel. He drove to the motel and talked to the manager who confirmed that Moses Duron was registered to room 209 and that the registration slip showed that the car associated with the occupants of the room was a Lexus. At that point, Sadlowski "asked Wheatland units" if the car they were looking for could be a Lexus; he was told that it could have been.

As Sadlowski was standing in the motel office speaking to the manager, he saw a white Lexus drive into the parking lot and then leave driving east on North Beale Road.

Deputy Scott Rounds was also on duty. After he heard the first broadcast of descriptive information, Rounds and his partner began driving toward a "possible address in Olivehurst for a Moses Duron." While en route, they heard over the radio that other officers "had a white Lexus in the parking lot of the Rio Rancho Hotel with two HM's." Rounds and his partner started back to the motel and then heard that "[t]he vehicle started to move" and that Sgt. Barnes was going to stop the car. Rounds watched the other patrol car pull the Lexus over and then assisted in the arrest.

According to Rounds, he heard the second BOLO reporting (about ten minutes after the first) that the car the officers were looking for might be a Lexus. The information that Barnes was stopping a Lexus came "[a]lmost immediately" after the second BOLO.

After the stop, the police found defendant and another Hispanic male in the car; defendant was the passenger. A search of the car revealed a handgun under the driver's seat. Officers also found a .22-caliber handgun inside defendant's leg brace.

Defendant was charged with discharging a firearm from a motor vehicle at another person (§ 12034, subd. (c)), assault with a semiautomatic firearm (§ 245, subd. (a)(3)(b)), and being a felon in possession of a firearm (§ 12021, subd. (a)(1)). The information also alleged three prior strikes. Defendant filed a

motion to suppress the evidence seized after the Lexus was stopped, arguing that the traffic stop and the detention were unlawful. The trial court found there was a reasonable suspicion to stop the car and denied the motion.

Defendant later pleaded nolo contendere to the charge of being a felon in possession of a firearm and admitted the three prior felonies. The prosecutor dismissed the remaining charges. The trial court sentenced defendant to 25 years to life, and this appeal followed.

STANDARD OF REVIEW

"The standard of appellate review of a trial court's ruling on a motion to suppress is well-established. We defer to the trial court's findings, express or implied, where supported by substantial evidence." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) However, we exercise our independent judgment in determining whether, on the facts so found, the challenged search or seizure meets constitutional standards of reasonableness. (*People v. Ritter* (1997) 54 Cal.App.4th 274, 278.)

DISCUSSION

In contending that the trial court erroneously denied his suppression motion, defendant asserts that the investigative stop in reliance on the information issued in the radio bulletins violates the Fourth Amendment. There is no merit to this contention.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures . . . ." (U.S. Const., 4th Amend.) The police may stop persons in the absence of probable cause under limited circumstances. (See *Terry v. Ohio* (1968) 392 U.S. 1, 20-22 [20 L.Ed.2d 889, 905,-906].) A detention is reasonable under the Fourth Amendment when a police officer can point to specific and articulable facts that give rise to a reasonable suspicion of criminal activity. (*Id.* at p. 21 [20 L.Ed.2d at p. 906].)

Defendant argues that the suspicion in this case was not reasonably based on "specific and articulable facts" because "[t]his was not a situation where the police personally observed [defendant] shooting or even related that a percipient witness personally observed [defendant] as the shooter." This argument is unpersuasive.

Reasonable suspicion is a less demanding standard than probable cause "not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." (*Alabama v. White* (1990) 496 U.S. 325, 330 [110 L.Ed.2d 301, 309].)

"[A]s a general proposition, private citizens who are witnesses to or victims of a criminal act, absent some circumstances that would cast doubt upon their information,

should be considered reliable." (*People v. Ramey* (1976) 16 Cal.3d 263, 269). In order for such information to form the basis for reasonable suspicion, the police must be "aware of the identity of the person providing the information and of his status as a true citizen informant." (*Ibid.*)

In the instant case, defendant argues that the prosecution's citations to the record stated no facts regarding the informants' identities. Contrary to defendant's claim, this case did not involve anonymous informants. Eyewitnesses identified themselves to the police and named defendant as the shooter in the assault. Witnesses also advised officers the kind of weapon he used. They furnished information "sufficiently detailed to cause a reasonable person to believe that a crime had been committed and the named suspect was the perpetrator. (*People v. Ramey, supra,* 16 Cal.3d at p. 269)

Defendant further argues that even if the radio dispatches in the instant case contained enough specific and articulable information to support the requisite reasonable suspicion for a temporary detention, the stop here was unreasonable because the car was not a Honda containing three males, but rather a Lexus containing two males. The trial court found the discrepancies neither material nor significant. We agree with that assessment.

We are forced to piece together the sequence of events on April 14 from a number of witnesses, in part because the prosecution chose not to call the officer who stopped the Lexus to inquire into the basis for his suspicion that the car he

stopped was the one carrying the people for whom they were looking. We recognize that Duron seems to complain on appeal that the officers' suspicion was not reasonable only because the car did not sufficiently match the description given -- it was not a Honda, and there were only two, not three, Hispanic males traveling in it. In any event, the record is sufficient to support the legality of the vehicle stop for the following reasons.

Citizens at the campsite reported that it was Duron who fired a .380-caliber handgun, that he was with three other Hispanic males, that they were driving a white, newer-model Honda that had been "lowered" and had custom rims, and that Duron was possibly staying at the Rio Rancho Motel. The officers broadcast that information on a county radio monitored by other officers, telling them to be on the lookout for the car and the suspects.

Deputy Sadlowski drove to the Rio Rancho Motel after hearing the broadcast. The manager at the motel told him Duron was staying in room 209 and that the car registered to the room was a white Lexus. Sadlowski then used the radio to ask if the automobile involved in the incident could have been a Lexus; he was told that it could have been. While Sadlowski was talking to the manager, a white Lexus drove into the motel parking lot and, when Barnes saw it leave, he stopped the car. This stop came "[a]lmost immediately" after the second broadcast, which confirms that the automobile to watch for might have been a Lexus.

The question of course is whether Barnes, the law enforcement officer who made the stop, had specific and articulable facts that gave rise to a reasonable suspicion that the car he stopped was the car associated with the gunshots at the campsite. Barnes himself did not testify. But, through the testimony of others, the record is sufficient to demonstrate that Barnes possessed specific and articulable facts that gave rise to a reasonable suspicion by virtue of the information broadcast on the radio, his sighting of a white Lexus such as the one associated with Duron in the parking lot of the motel, and his "[a]lmost immediate" stop of the car as it left the parking lot. The detention was legal and the motion to suppress was properly denied.

We cannot leave this issue however without observing that the record in this matter relating to the stop of the white Lexus is not nearly as clear as it could or should have been. The failure to call Barnes, the officer who made the stop, to establish what he knew when he decided to pull the car over, and thus to establish a reasonable suspicion that this was the right car, creates the difficulty. While the prosecution appears to have intended to call Barnes on the motion, it apparently decided not to do so after an unrecorded conference between the trial judge and counsel. We do not know what was said, but what may have appeared clear to the court and the parties was not nearly so clear on this record and we invite closer attention to the state of the record in the future.

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

DAVIS, Acting P.J.

RAYE, J.